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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,813	09/25/2003	John A. Sulaver	SUL-100	8935
23843	7590	07/28/2006		
FOOTHILL LAW GROUP, LLP 3333 BOWERS AVE., SUITE 130 SANTA CLARA, CA 95054				
			EXAMINER TRIEU, VAN THANH	
			ART UNIT 2612	PAPER NUMBER

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/672,813	SULAVAR, JOHN A.	
	Examiner	Art Unit	
	Van T. Trieu	2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/23/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 30 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "as said depiction" is indefinite and unclear to which and what exactly preferring to.
2. Claims 30 and 31 recites the limitation "said depiction" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 8, 9, 11-16 and 21-32 are rejected under 35 U.S.C. 102(b) as being anticipated by **Peterson et al** [US 5,450,063].

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Regarding claim 1, the claimed an alerting device, comprising: at least one motion detector (the transmitters 11 and receivers 12 and a video motion detectors 55 and 70, see Figs. 1 and 6, col. 4, lines 36-68 and col. 9, lines 49-59); and an announcement device with a prerecorded message (the speakers 15 and 40, see Figs. 3, 4 and 6, col. 5, lines 21-30 and col. 9, lines 24-32); and at least one light emitting device (the high intensity lights 16 and 41, see Figs. 1, 3, 4 and 6, col. 5, lines 31-42, col. 6, lines 42-51); and at least one warning replica (the replica of a falcon 37 and/or the mannequin 45, see Figs. 3 and 4); and the at least one warning sign (the flapping wings 37 or the rapidly rise and fall arms 45a of the mannequin 45, see Figs. 3 and 4, col. 6, lines 27-39 and col. 7, lines 1-9); and the at least one illumination means (the illuminating light 48, see Fig. 4 and 6, col. 7, lines 9-14); and the signal transmitting means operatively connecting the at least one motion sensor to the announcement device, to the at least one warning replica, to the at last one warning sign, to the illumination means (the detected/sensed signals are transmitted to the controller 60 and to each of the speakers, lights and falcon/mannequin, see Figs. 3, 4 and 6, col. 5, lines 1-9, col. 7, lines 43-49 and col. 9, lines 20-42); and the power source for supplying energy to the alerting device (the electrical power source, see col. 7, lines 49-53);

Regarding claim 2, the claimed a manual on and off switch, the switch operatively connected to the alerting device, which reads upon the bypass switch 72 for turning on/off during testing the system, see Fig. 6, col. 10, lines 1-12).

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Regarding claim 3, the claimed at least one motion detector further comprises a timer (the timer 71, see Fig. 6, col. 3, lines 27-32 and col. 9, line 65).

Regarding claim 4, the claimed alerting device is portable (see Figs. 1, 3 and 4).

Regarding claim 8, all the claimed subject matters are cited in respect to claim 1 above, see col. 9, lines 24-32.

Regarding claim 9, all the claimed subject matters are cited in respect to claim 1 above, see col. 9, lines 24-32.

Regarding claim 11, the claimed motion detection is adjustable to illuminate the at least one warning replica under varying light conditions (the high intensity of illuminating light 48 is changed according to the no or low light conditions, see Fig. 4, col. 7, lines 8-14).

Regarding claim 12, the claimed at least one warning replica is positioned in the space defined by the at least one warning sign (the replica falcon 36 and mannequin 45, see Figs. 3 and 4).

Regarding claim 13, the claimed at least one warning replica is positioned in the space beyond the space defined by the at least one warning sign (the replica falcon 36 and mannequin 45, see Figs. 3 and 4).

Regarding claim 14, all the claimed subject matters are cited in respect to claim 1 above, see Figs. 3 and 4.

Regarding claim 15, the claimed animal face or animal body comprises at least on face, head or body of a: dog, wolf, tiger, lion, leopard, cheetah, hyena and other vicious animal, which reads upon the replica falcon 36, see Fig. 3.

Regarding claim 16, the claimed animal face, animal profile, animal head, animal body further comprise a movable portion, the movable portion being capable of changing its position contemporaneously or sequentially with the prerecorded message (the moveable wings 37 with the recorded sounds, and/or arms 45a with the gun shot, see Figs. 3 and 4, col. 9, lines 20-37).

Regarding claim 21, the claimed at least one warning replica is made of weather resistance material, see col. 7, lines 32-42.

Regarding claim 22, the claimed high density molded plastic (the plastic, see col. 7, lines 32-42).

Regarding claim 23, the claimed high density plastic is Telfon, which reads upon the plastic material see col. 7, lines 32-42.

Regarding claim 24, the claimed light emitting device is position in the interior of the at least one warning replica (the visor light 48, see Fig. 4).

Regarding claim 25, the claimed at least one light emitting device comprises ultraviolet, blue, yellow, orange, green and red colors (the light colors, see col. 5, lines 37-39 and col. 9, lines 32-35).

Regarding claim 26, the claimed at least one light emitting device is capable of intermittent operation (flashing strobe lights 16 and 41, see col. 9, lines 32-33).

Regarding claim 27, the claimed at least one motion detector, the announcement device, the warning replica and the at least one light emitting device are an integral unit, see Fig. 4.

Regarding claim 28, the claimed at least one motion detector, the announcement device, the warning replica and the at least one light emitting device are not an integral unit, see Fig. 3.

Regarding claim 29, the claimed transmitting means comprises hard wiring, a fiber-optic connection or wireless transmission (hardwiring, see Fig. 6).

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Regarding claim 30, the claimed warning sign warns of the presence of the same animal as the depiction (the falcon warning to warn birds, see Fig. 3).

Regarding claim 31, the claimed at least one warning sign warns of the presence of an animal different from the depiction (the mannequin warning to warn birds, see Fig. 4).

Regarding claim 32, the claimed at least one warning sign warns of the presence of a dog comprising a watch dog, German Shepard, Doberman and Rottwieller, which reads upon the dogs barking.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063] in view of **Baldwin et al** [US 5,971,597].

Regarding claim 5, **Peterson et al** fails to disclose at least one motion detector is a light beam motion detector. However, **Peterson et al** teaches that the microwave transmitters 11 and receivers 12 or 50 are used to detect of birds or animals passing the detected areas/zones 13, see Figs. 1 and 5, col. 4, lines 36-68. **Yu** suggests that the lighting fixture comprising an illumination device such as a light bulb, a motion detector,

and an announcement device are assembled together within the body of the lighting fixture and formed integral parts of the lighting fixture. The motion detector is connected to power supply source. The lighting fixture can either be an outdoor or an indoor lighting fixture. The motion detector may comprise of an ultrasonic or infrared sensor. These sensors use changes in received ultrasonic or infrared energy to indicate movement of a person or an object such as a motor vehicle within an area monitored by the motion detector. The sensitivity of the infrared sensor can be adjusted to a level such that movements of small animals e.g. dog, cat etc. will not trigger the lighting fixture and announcement device, see Fig. 2, col. 2, lines 6-25. Therefore, an artisan would substitute either the IR or ultrasonic sensor of **Yu** for the microwave transmitter and receiver of **Peterson et al** for reducing and/or eliminating of electromagnetic interference with other radio electronic devices/equipment within the area while still providing effectively detecting motions of animals, birds and/or human intrusion.

Regarding claim 6, the claimed light beam motion detector is an infrared detector is met by the combination between **Peterson et al** and **Yu** in respect to claim 5 above.

Regarding claim 7, the claimed at least one motion detector is an ultrasonic is met by the combination of the ultrasonic detector between **Peterson et al** and **Yu** in respect to claim 5 above.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063] in view of **Reich** [US 5,892,446].

Regarding claim 10, **Peterson et al** fails to disclose the power source comprises battery, solar power and household current. However, **Peterson et al** teaches that the bird avert system includes a power source for providing electrical power to the speakers, lights, motors and electronic circuits, see Fig. 6, col. 7, lines 49-53. **Reich** suggests that an animal deterrent device 100 include electronic circuits, light source 10, radio 12, IR heat and motion sensor 8 are electrically connected to a battery 2, solar panel 1, battery 2 and conventional household power source via plug 20, see Figs. 1-3, col. 3, lines 37-67 and col. 4, lines 1-13. Therefore, an artisan would substitute the battery, solar panel and household power sources of **Reich** for the power source of **Peterson et al** since the bird avert system can be use at any location near the housing or building and can be far away, thus, with all electrical power source options will provide convenience and greater flexibility of operating the system without restriction of electrical power sources.

6. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Peterson et al** [US 5,450,063].

Regarding claim 17, **Peterson et al** fails to disclose the moveable portion further comprises ears and jaw of an animal, the jaw being capable of opening and closing movements. However, **Peterson et al** teaches that the wings 37 of replica falcon 36 being flapping up and down to simulate the predatory bird noises, and/or the mannequin

45 to generate human sounds, see Figs. 3 and 4, col. 9, lines 2-32. Therefore, an artisan would recognize that it is a design choice to make the jaw of the mannequin to move according to the recorded human voice for scaring the birds.

Regarding claim 18, **Peterson et al** fails to disclose the jaw comprises at least one tooth and a tongue. However, according to the discussed of the mannequin's jaw of **Peterson et al** in respect to claim 17 above, it would have been obvious to an artisan to create the at least one tooth and a tongue for the mannequin for greater human look alike, which provides a greater effective of scaring the birds.

Regarding claim 19, **Peterson et al** fails to disclose the moveable portion is detachably connected to the at least one warning replica. However, **Peterson et al** teaches that the wings 37 of replica falcon 36 being flapping up and down to simulate the predatory bird noises, and/or the mannequin 45 to generate human sounds, see Figs. 3 and 4, col. 9, lines 2-32. Therefore, an artisan would recognize that either the wings and/or arms could be detached or disassembled from the falcon or mannequin since they are mechanical assembling for providing motions.

Regarding claim 20, the claimed moveable portion is an integral part of the at least one warning replica, see Figs. 3 and 4.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Segan et al discloses a modular dynamic dialogue animated device to perform of corresponding storyline events such that precise synchronization between audio and movement is provided and displayed. [US 6,249,278]

Kawai et al discloses an apparatus provided with a sensor for detecting motion of a user and to display new image data representing a motion of the animal in place of the previously displayed image data to show how the animal reacts to the user's motion. [US 6,118,458]

Dando discloses an intrusion sensing system using IR and/or microwave sensors. [US 6,127,926]

8. Any inquiry concerning this communication or earlier communications from examiner should be directed to primary examiner **Van Trieu** whose telephone number is (571) 272-2972. The examiner can normally be reached on Mon-Fri from 7:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Mr. Mike Horabik** can be reached on (571) 272-3068.



Van Trieu
Primary Examiner
Date: 7/11/06